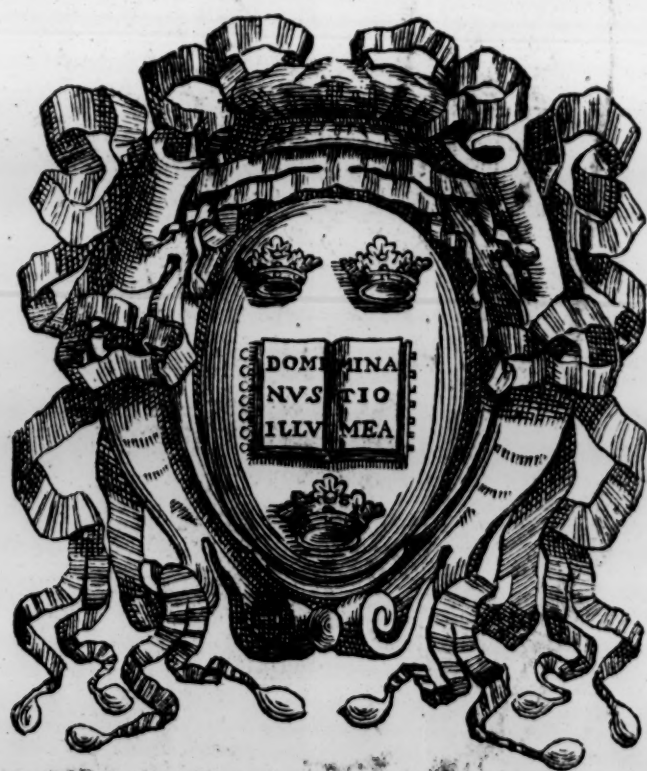


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THE
PROCEEDINGS
OF THE
Visitors of *University* College,
With Regard to
THE LATE DISPUTED ELECTION
OF A
MASTER,
VINDICATED.

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O X F O R D,

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THE BRITISH MUSEUM

ART TO

THE BRITISH MUSEUM



Observations upon the Two Statutes, The One *suppos'd to Relate*, The Other *Relating* to the Election of a Master of University College, by One of the Visitors, in a Letter to a Friend.

E Statutis Collegii Antiquioribus conditis per Dominum Cancellarium, Doctores in S. S. Theologia & Procuratores Univ. OXON. Anno Domini

I 3 I I.

I *mprimis Ordinatum est, quod in Electione cujuscunque Socii ad Eleemosynam per Antedictum Magistrum Wilbelmum assignatam Scholaribus de cetero faciendâ, Omnes & Singuli Socii, quibus ex Eleemosynâ ministratur Ejusdem, & qui pro tempore Electionis præsentes fuerint, eligent sine Acceptatione Patriæ vel Personarum Talem quem credunt Ornatum moribus, in facultatibus Pauperem, & ad proficiendum in facultate Theologicâ magis aptum. Cæteris vero paribus, Ordinaverunt, quod Ille præferatur cæteris, qui de partibus Dunelmie proximè oriundus exstiterit. Electores vero Electum suum quam citius poterint dictis Domino Cancellario & Doctoribus Sacræ Theologie una cum Procuratoribus Præsentent, qui ad Deliberandum de Electo & Ejus Conditionibus Bidduum habeant vel Triduum, & ex tunc juxta Conscientias eorum ipsum aut reprobent vel admittant. Et si contingat Ipsum ex causâ Legitimâ reprobari, absque omni strepitu judiciali prædicti Socii juxta formam, quâ prius, alium eligant sine morâ.*

S I R,

I. **I** Observe, That, when This Statute was made, and, for 164 years after, the *Senior Socius* or *Master of University College* was not *Elected*, but *Succeeded* to the Headship according to the order of Seniority, by Virtue of a Statute made 19 years before This; and that this Statute relating evidently to an *Election* must therefore relate to the Election of some *Other* Person or Persons, and not to the Election of a *Master*, or *Senior Socius* to the Masterhip.

II. I observe, from These Terms, in the above-written Statute, in *Electione cujuscunque Socii ad Eleemosynam assignatam Scholaribus*, and from the nature of the *Qualifications* requir'd in the Person to be *Elected* and *Presented* to the Visitors for their approbation, that this Statute doth wholly relate to the Election of a young *Fellow* into a Vacant Fellowship, and not in any wise to the Election of a *Master* into the Vacant Headship.

III. I observe, that when, at the time appointed for the Election of a Master into the late Vacancy, the Local Statutes relating to the said Election were order'd to be read, pursuant to Q. Elizabeth's Act of Parliament, this Statute was declar'd by Mr. *Cockman's* Friends not necessary to be then read, having no relation to that Election, and accordingly was not then read. So that, however afterwards they might think it for their Interest to have it otherwise understood, I have Their unprejudic'd Opinion, at the time of the Election, to confirm me in Mine, that the above-written Statute doth in no wise relate to the Election of a *Master*, but to That only of a *Fellow*.

Now, that there was a Statute which did oblige the Visitors, within 3 days, to approve or disapprove of a young *Fellow* *Elected* and *Presented* to them for their Approbation, was not an Argument to Me that the said Visitors were by the Same Statute oblig'd, within 3 days, to approve or disapprove of a *Master* *Elected* and *Presented* to them for their Approbation.

I therefore thought I might innocently adventure to deliberate concerning an *Elected Master* and his *Qualifications*, beyond the 3 days, within which my Deliberation concerning an *Elected Fellow* and His *Qualifications* was confin'd, notwithstanding there were Others, to whose Judgment I pay great deference, who thought this Proceeding not warrantable, and Protested they had no Authority to Deliberate any further concerning the *Elected Master*, since the 3 days (which have been prov'd to have been allow'd only to deliberate concerning an *Elected Fellow*) were expir'd.

I was then and am still of Opinion, that, since this Statute related wholly to the Election of a *Fellow*, and in no wise to the Election of a *Master*, I should have acted as unwarrantably in deliberating about an *Elected Master* within 3 days, upon *This Statute*, as after the 3 days therein mention'd were expir'd. For what Authority can a Statute, relating wholly to the Election of a *Fellow*, give me to deliberate an hour concerning an *Elected Master*? If I had had no other Authority to deliberate concerning the *Elected Master*, I should have had none at all, and must rather have Protested from the beginning, that I had no Authority to take cognizance of the *Master's* Election at all, than that I had none after the 3 days (allow'd me to deliberate concerning an *Elected Fellow*) were expir'd.

But it hath been said That, if This Statute doth not relate to the Election of a Master, there is no Other Statute that doth expressly give the Visitors of University College any Authority to Deliberate about the *Master's* Election, or to Approve, or Disapprove of it. Be it so, who can help it? This circumstance will

not make a Statute relate to the Election of a Master which doth evidently Not relate to the Election of a Master. If it be necessary there should be an *Express Statute* to Enable the Visitors to deliberate concerning an Elected Master, it is confess'd, they have it not. But, I trust, this will be found not to be necessary. And, in the mean time, I do hope, Those Visitors who have exercis'd This Authority by virtue of That Statute which doth certainly relate to the Election of a Master, and, as they conceive, doth suppose Them to have This Authority, tho' it be not therein express'd, will be as excusable as Those Visitors, who would have Exercis'd This Authority, by virtue of That Statute which doth certainly not relate to the Election of a Master, as if it had, only because there is an Authority belonging to them therein express'd, and given them to another Purpose.

This Statute then I think, may well be dismiss'd; but before I part with it, I will, for once, Admit that it Doth relate to the Election of a *Master*, in order to see what use can be made of it against the Proceedings of the *Acting* Visitors, by the *Protesting*.

If This be admitted, say They, You ought to have deliberated concerning the *Elected Master* Presented to you, and to have Approv'd, or Disapprov'd of him, within 3 Days, which You did not do.

To This I answer, That an *Elected Master* was not Presented to me, but a Person concerning whom there was a Dispute whether he was Elected or no. That, in order to Judge rightly of This Dispute, it was fit I should have sufficient time allow'd me, and that 3 days were not a Sufficient time. For, in an Election of This kind, there were *Statutes* to be perus'd, and *Registers* to be consulted; the *Opinions* of *Canon Lawyers* to be ask'd, and the *Autorities* produc'd from the *Canon Law Books* to be consider'd; and all This by a great Number of Visitors. It was therefore necessary that This Point, *who was Elected*, should be first Settled, and then, that the Visitors should have 2 or 3 days allow'd them wherein to consider of the Merit of the Elected Person, and of his Qualifications; about which they would, before, have deliberated to no purpose, if it should afterwards appear that the Person suppos'd to have been Elected was not Elected. But if the nature of the Thing had not necessarily requir'd This, yet, since the Visitors were of Opinion that it did, They were the proper Judges, and had full Power expressly given them by a Statute Subsequent ro This to Dispense with This. * *Item, si in aliquo prædictorum fuerit hæsitatio, seu dispensatio facienda, super omnibus talibus habeant Prædicti* [Cancellarius, Doctores & Procuratores,] *dispensandi plenariam Potestatem.*

Since I have allow'd this Statute to relate to the Election of a Master, I cannot, I conceive, be now Denied This Benefit from my Concession, That the Visitors have Cognizance of the said Election, and cannot any longer be distress'd by a Pretence that they want *express Authority* for doing what they have done. But, because I do, from my heart, believe it doth not relate to the Election of a *Master*, I disclaim any such Benefit from This Statute, and proceed to Enquire, Whether an Authority expressly given by Statute be necessary to enable the Visitors to deliberate concerning the Disputed Election of a Master.

It is a Current Opinion, and not ill Supported, that *The Convocation* were the Original Visitors of University College; that, finding the Visitatorial Power Lodg'd in too many hands, They Deputed it, first, to the *Chancellor, Doctors of Divinity, and Proctors, and certain Other Doctors in each Faculty, and certain Masters of Arts*; And, afterwards, for the same reason, to the *Chancellor, Doctors of Divinity, and Proctors Only*.

As far as appears to Me, there never hath been Any Other Deputation of Visitors since This. This hath subsisted for several hundred Years. The Members of University College are Govern'd by no Other Statutes than Those which they have from time to time reciev'd from These Visitors, except some Few which were given the Society in 1403, and 1443, by *Skirlow* and *Piercy*, relating to the Fellowships by Them respectively founded in the said College. The said Founders with regard to their Own Statutes † do call upon the *Chancellor, Doctors of Divinity, and Proctors* (whom they acknowledge to be the Visitors of the College in other respects) to see them effectually observ'd. And the *successive Visitors* of this College have not doubted to Interpret, Enforce, or Dispense with, or Annul the Statutes made by their *Predecessors*, as often as they have seen good reason so to do, and to make New Ones in the room of Those they have thought fit to lay aside, and to order them, when made, to be inserted into the Statute Book of the Society, and to be read every Term together with their Other Statutes, and to stile Themselves, in the Preamble of such Order, *The Lawful and Undoubted Visitors of University College*.

Pursuant to This Power, In 1475, They annul'd the *Ancient Statute* directing the Senior Fellow to Succeed to the Headship according to the Order of Seniority, and gave the Society a *New Statute* enjoining Them to Choose Their Head, for the future, by a *Canonical Election*.

If, after This, They shall at any time neglect to Proceed *Canonically* in Electing their Head, or Declare a Person Elected who is not *Canonically Elected*, and any Member of their Body shall think himself hereby aggriev'd, and Appeal, it can be no Question with me, whether the Visitors whose Authority to Make This Statute is not Disputed, have Authority also to Interpret it, and to receive the Appellant's *Querela*, in case he thinks himself Injur'd by it's having been misunderstood, altho there be not an *Express Authority* given to them for this purpose in This Statute, or in any Other.

The Visitors, as they were the Compilers, so are they the Guardians of the Statutes, and of the Rights of those whom they have made Subject to them, and seem to Me not only to have Power to Redress any Grievance arising from the Violation of Them, but to be under an Obligation also to do it. By the Applications that have at Sundry Times been made to them in doubtful Cases, and by the steps they have taken thereupon, without express direction from Statute, all the Exigencies of the College appear to be the proper Matter of their Deliberation. And if an Injur'd Person cannot have Recourse to Them for Relief, he must Submit to be Oppress'd without Remedy, since no other Resort is pointed out to him, or so much as Presum'd by the Statutes of This College.

By Vertue of this Power, the Visitors in 1666, oblig'd the Fellows of this House, which was design'd for a Nursery of Divines, to go into *Deacons Orders*, within 4 Years after they were Inceptor Masters, or of that Standing, and into *Priests Orders*, the Year after, by a Statute of their Own making.

And, by Vertue of This Power, did Four of those Gentlemen, who now Protested they had no Authority to take Cognizance of the Master's Election, after 3 days were expir'd, no Statute expressly allowing them so to do, join with Other Visitors of the College, in May 1711, to take *Allen's Case* into their Consideration, and, on June 30th following, to Confirm the Master's Proceedings against him, who had Vacated his Fellowship by reason of his Preferment, and to make 3 Statutes upon that occasion for the future Use of That Society, without any *Express Authority* from any Statute so to do.

* Col. Stat. p. 4. † Col. Stat. p. 21. and 26.

In short, This Power doth not appear to have been Interrupted for several Hundred Years. The Society, upon all occasions worthy their Notice, and needing their Interposition, have had recourse to the Authority of the Visitors, and acquiesc'd in their Decisions. And, in the very Case now before them, The Two Competitors for the Headship have not scrupled to acknowledge Their Authority, The One applying to it for Confirmation of his Suppos'd Election, The Other for Delay of such Confirmation, till he should be heard concerning the suppos'd Illegality of it.

And, after all, If the Nature of the Visitation Office (not particularly restrain'd) did not suppose the Power claim'd and Exercis'd by the Visitors of This College, to belong to Them; or, if their Long Possession and Use of the said Power did not confirm their Right to it; yet, in the present case, the *Canon Law* Itself, explaining to All Electors what is a *Canonical Election*, and assigning the Cognizance, and † Confirmation of it, to their Superiors, doth undoubtedly give it them, Their *Superiors*, in this respect, being no Other than Their *Visitors*.

† Electio Canonica Confirmanda est, debet tamen superior ante Confirmationem inquirere de Conversatione & Vita Electi, ubi fuit Conversatus. Decret. Tir. de Elect. Cap. Postquam.

E Statutis aliis Collegii conditis per Magistrum Chaundler Cancellarium, Sacrae paginae Doctores & Procuratores Universitatis OXON. Anno Domini

1475.

Item Ordinatum est, quod, postquam Magister Wilhelmus Gregforth nunc Magister Collegii in fata decesserit, vel Collegium quovismodo legitime dimiserit, quod à modo & deinceps, Magister Collegii non succedat secundum Ordinem Senioritatis, sicut volunt Antiquiora Statuta, sed per Canonica Electionem. Proviso semper quod ille qui Electus est in Officium Magistri olim fuit Socius, & de Gremio & Comitiva ejusdem Collegii; & quod possit stare Magister Collegii cum quocunque Beneficio vel quibuscunque Beneficiis ad quod vel ad quæ Canonice fuerit promotus ad terminum Vitæ suæ, & habere Regimen Domus, Societatis & Comitivæ in omnibus Licitis & honestis, sicuti alii Præpositi, Rectores, vel Guardiani habent seu habere consueverunt intra Universitatem.

With regard to This Statute I Observe

I. That this is the *Only Statute* which doth any way relate to the Election of a Master of University College.

II. That the Society have always *Guided Themselves* in the Election of a Master by *This Statute*.

III. That This Statute doth enjoin to be made, not simply an *Election*, as it is oppos'd to *Succession*, but a *Canonical Election*.

IV. That, therefore, from the making This Statute, no other Sort of Election whatsoever but what is *Canonical* will be of any validity to the Person pretending to have been Elected; and that, ² if there hath been any other Sort of Election of a Master, since that time, it hath been a Departure from this Statute deserving the Animadversion of the Visitors.

If, as hath been said, there are *several sorts* of *Canonical Elections*, and it may be doubtful which sort is here intended by the Compilers of this Statute, this *Term* being absolute and unlimited, I observe

V. That, because the *Term* is absolute and unlimited, it is, therefore, to be understood in its most known and general signification: especially if no reason appear of a contrary intention in the Compilers of the said Statute.

VI. I observe, that the *Term Canonica Electio* is a *Term*, not of the *Common*, but of the *Canon Law*; and that, in order to learn what was the most known and general signification of it, I was not to have recourse to *Westminster Hall*, or to Persons skill'd in the *Common Law*, but to the *Canon Law* Books, and to Persons conversant in the *Canon Law*. From these Books, and by these Persons I was inform'd, "That a *Canonical Election* was an Election by a ³ Majority of the whole number of Electors Present; That "if there were not more than ⁴ One Half of the Electors Present consenting in the Election of One "Man, there was no Election; That if out of 13 Suffragants (suppose) *Thomas* had 6, another 5, and another "2, yet, ⁵ for as much as *Thomas* had not 7 the major part of the whole 13 met together to Elect, the Election of *Thomas* was null; That if, in *Canonical Elections*, a Lesser Number than One half of the whole "Congregation hath at any time made an Election; this hath been, either, ⁶ by *Compromise*, as when the

¹ *Hampsterley*, The First Master upon the College Register, since this Statute, was elected *Capitulariter secundum formas Juris & Statutorum*. i. e. *Juris Canonici & hujus Statuti*. The Second Register'd Master was *Huchinson*, and He appears to have been Elected *Secundum formas & solemnitates Usitatas*. Now, What Forms and Solemnities were *Usual*, can be learnt only from Preceding Elections. The only Preceding Election, since the Statute, that appears, is the Before Cited; and That immediately preceding This, would have interrupted any different Usage in Elections Prior to That, if there had been any. See *Coll. Reg.*

² There doth not appear to have been any; Every Master, since the Statute, having been Chosen by a Majority, of, at least, 4 to one. See *Coll. Reg.*

³ Ut electio valeat, oportet de necessitate quod Eligatur quis à majori parte habentium jus eligendi, habito respectu ad totam Congregationem, unde, non sufficeret major pars comparatione minoris partis, sed debet esse major pars Totius Congregationis. Abbas Consil. 25. parte 2da. num. 4.

⁴ Consensus Substantia in eo consistit quod Major pars consentiat Ele-

ctioni. viz. quod sint ultra dimidiam Numeri Eligere debemus. Baldus Consil. 388. ad Audientiam N. 4. versic. & Considero Lib. 1. Et Consil. 316. Ponitur quod Lib. 3. Saltem Una Vox requiritur ultra Dimidiam.

⁵ Ecclesia Vestra Pastore destituta, & Vois Vestris in Diversos divisit, Quidam in Thomam, Quidam in Cancellarium, & quidam singulares in singulares Personas ejusdem Ecclesie consensistis. Verum, cum super his, in Nostra & Nostrorum Fratrum Præsentia multa fuissent hinc inde proposita, Invenimus quod Illi, qui sua in Thomam desideria dirigebant, licet majorem partem facerent partium comparatione minorum, non tamen ad majorem partem Capituli pervenerunt. Unde quod factum est Thomæ prædicto cassavimus. Decretal. Tit. de Electione Cap. Ecclesia Vestra.

⁶ per Compromissum celebratur Electio, cum plures idonei Viri eliguntur, in quos omnium vice Eligendi certo modo facultas & potestas transfunditur. Qui Arbitri, Compromissi fines diligenter custodire Debent, scituri, si quid non secundum demandatam formam egerint, nullum habiturum esse Juris effectum. Lancelotti Instit. Jur. Can. Tit. de Electione.

"¹ Whole Body have Delegated to such Lesser Number a Power to Represent and Act for them *pro hac vice*, and even then not less than a ² Majority of the *Compromissarii* have Elected; or, by virtue of a ³ Previous and Express Agreement of All the Electors, that a Person having a greater number of Votes than Any Other Candidate, shall succeed, and then a *major pars partium comparatione minorum* have Elected; That neither of These was the Present Case, and, That, excepting these Cases, *cessante speciali Jure*, (as in the Present Case it did) a Major Part of the whole Congregation was necessary in all Canonical Elections whatsoever. Moreover, That, if only an Election, and not a Canonical Election had been enjoined by this Statute, yet, forasmuch as the Election was to be made by Persons who Voted as ⁴ a Body, and not as single Persons, it must have been made by a major part of the whole number Present, the Canon Law (and, the Civil Law too) directing all Elections (*cessante speciali Jure*) so to be made, wherein the Electors are considered *tanquam Collegium, tanquam Universitas, or tanquam Universi*; and not *tanquam singuli*. And, Lastly, That the chief Reason of the Institution of Canonical Elections was, that the *Dignior Persona* might have the greater chance to succeed, it being, otherwise, easy for an Artful Person to divide a Congregation into several Parts, in order to get the Greater part compared with the Rest, however Small in respect of the Whole, to Vote for Himself.

The Proof of what I chiefly wanted to be satisfied in was abundant, clear, and convincing; and if any thing could have been said to have refuted or weaken'd it, it was very much to Mr. Cockman's Purpose to have done it, either by Himself, or by his Counsel.

It hath, indeed, been Objected to the Acting Visitors, that they would not Hear his Counsel, but, how reasonably, I submit to the Reader's Interpretation of that matter. The Appellant had 15 days allow'd him wherein to lodge his Appeal. He lodg'd This sooner than he needed to have done by 12; and, not imagining that a Hearing of this Cause would, by any Visitor, have been insisted upon the very next morning, was, in fact, not ready to have laid his Complaint before the Visitors in that order which was proper, however, as an Appellant, he might be presum'd to be so. Neither were Many of the Visitors Themselves prepar'd to hear any Counsel on either side, not having, as yet, read any of the College Statutes relating to the said Election. A thing, sure, very Proper, in Itself; and particularly so, if it be consider'd that, those Few of them, who, in a private manner, had been oblig'd with an early sight of those Statutes, are not generally esteem'd to have been so fortunate as, at that time, to have hit upon the true meaning of them, but rather, thro' their Own Error, to have misinform'd and misled Others also. However, if the Visitors did not so far favour the Party Appellate as to hear the Opinion of his Counsel, the very next morning, concerning the meaning of Statutes which they had not as yet read themselves, and which those, who had read them, for want of longer time to consider them, had misunderstood; neither did they gratify the Desire of the Party Appellant, who press'd that the Hearing of this Cause might be deferr'd till that day fennight: But appointed an Intermediate Day for this Purpose.

If Dr. Henchman, who, without doubt, is a very Learned and Able Advocate, could not stay till This Day, a longer time would have been allow'd, and was Offer'd to Mr. Cockman, wherein he might have got what Other Counsel he had pleas'd, in the room of Dr. Henchman, to have pleaded for him. To which Offer, since he made no other Answer, than that he should leave the Determination of the Affair to the ⁵ Consciences of the Visitors, it was presum'd he intended so to have done, and to have acquiesc'd in Their Sentence.

Now, that, instead of this, he was afterwards advis'd to Renounce the Authority of the Visitors (to whom as such he had but a little before apply'd for Confirmation of his suppos'd Election) and suffer'd Himself, in a private manner, to be ⁶ Intruded rather than Admitted Master (whilst the Appeal against his being duly Elected was Depending and before the Visitors) was not an Argument to me, That Canonical Electio hath Other Significations than those which the Skilful in the Canon Law had put upon it. On the contrary, I had reason to believe that the Interpretation I had heard given of that Term, was the True Sense of it, since no other was offer'd to the Consideration of the Visitors at a time when it was so very material to have produced it.

VII. I observe, that Mr. Cockman's Friends, as they could not but be very well acquainted with the Term, so were they not wholly strangers to the meaning of it, since, at the time of the Election, they so far allow'd it to be Canonical, as, from that consideration, to give Mr. Denison a Caution not to Vote for Himself in it⁷. Now, that Mr. Denison was put in mind by his Opponents not to Vote for Himself in this Election, because it was in that respect, to be Canonical; and that Mr. Cockman had thereby the Opportunity of 5 Votes to his Competitors 4, who, if he had Voted for Himself, (as he might have done, if it were not to have been a Canonical Election,) would have had 5 Votes in Ten as well as Mr. Cockman, was not an Argument to me that the Election was not to be Canonical, in that Other respect also in which it had been explain'd to be so.

But it hath been said, that a Canonical Election, as the Visitors have heard it explain'd, is the Election of a Bishop by his Chapter. I do believe it is, and from thence infer, that the Compilers of This Statute did in-

¹ Compromissum factum ab aliqua Universitate requirit Consensum Omnium præstitutum. Abbas Decretal. Tit. de remuneratione. Cap. Post Translationem. N. 4.

² Compromissarii, si non Omnes, sed major pars consentiat, quicquid agunt, valet. Abbas Decretal. Tit. de Electione. Cap. Cum Dilecti. N. 2.

³ Possunt vero Electores convenire à principio, ut ille sit Electus in quem conveniret major pars partium comparatione minorum, quia, propter primum consensum & conventionem, Omnes videntur, consentire. Abbas Confil. 25. p. 2da. N. 4.

⁴ Quando plures Patroni præsentant ut singuli, sat est, ut sit major pars respectu minorum. ut, si sint 7 Patroni & 3 præsentent Paulum, & duo Petrum, & duo Martinum, Paulus est Eligendus, quia licet non habeat majorem partem simpliciter, habet tamen majorem, respectu aliarum. Si vero Præsentatio fiat ab illis, ut à Collegio, requiritur absolute major pars totius Collegii. & idem est dicendum quoties aliqui habent explicare aliquem Actum, nam si, ut singuli, sat est major pars respectu minorum, si vero, ut Universitas, seu Collegium, requiritur major pars absolute. Hinc fit quod, cessante Jure Speciali, non valet Electio Rectoris facta per Scholares nisi major pars absolute eligat. Ratio, quia eligunt ut Collegium, non ut Singuli. Quando vero Jus Patronatus vel Electio competit Parochianis alicujus Ecclesiæ, non competit illis ut Universis, sed ut singulis, quia Parochiani non faciunt Collegium, nec reperiuntur in Jure

sale Collegium. Sanchez. Confil. Moral. Lib. 2. Cap. 3. Dub. Centes. & multi alii Doctores quos ibi refert.

Si in Universitate sint centum, & 50 eligunt unum, & 30 eligunt alterum, & alii alium, nulla Electio valet, quia non facta à majori parte Totius Univ. Nam Scholares eligunt ut Collegium, & non ut Singuli. Abbas Decretal. Tit. de Jur. Patr. Cap. Quoniam. N. 13.

Et hoc est regulare in Omnibus Universitatibus, Conciliis, Collegiis, & Capitulis, ut factum à majori parte valeat, & dicatur factum à toto Concilio, & totâ Univ. Decretal. Tit. Que fiunt à majori parte Capituli. Cap. 1.

⁵ This refers to juxta Conscientias, in the Former Statute, and may serve to shew what Confidence was put in That Statute.

⁶ Intrusus dicitur Iste qui non obtentâ Confirmatione à superiore ex solâ Electione capit possessionem Beneficii ad quod fuit electus. multo magis dicitur Intrusus qui, sine Electione, vel ex Electione non Canonica, puta minoris partis, se intrudit. Johannes de Immol. Confil. 132. in Causâ Taurienti. N. 7. And, indeed, Admission before Confirmation is just as absurd as Induction into a Living before Institution.

⁷ Quando Scrutinium fit secreto non potest quis in seipsum consentire, quia cum tunc ignoret an alii in eum consenserint, repelleretur iste tanquam Ambitiosus, si se ipsum eligeret. Abbas Confil. 25. p. 2da. N. 3.

tend, that the Master of University College should be Elected by the Society, much after the same manner as a Bishop was Elected by his Chapter¹. For, as in the Form of their Citations, the Fellows are expressly summon'd to proceed *Canonically* to an Election, so, when they are met together for that purpose, they are said to be *Capitulariter congregati*, and the first Register'd Head, after the making of this Statute, appears to have been *Capitulariter Electus*.

Were This Method of Election unknown to the University of Oxford, or not Practis'd by any Other Society in the Election of their Head, my Inference perhaps might not so easily be admitted. But, if the very *same sort of Canonical Election* be us'd, at this day, in many *Other Colleges*, in the Choice of their respective Heads, which hath been explain'd to the Visitors to be the Canonical Election requir'd in *University College*, I hope, It will not be thought Unnatural.

If, out of 60 Votes in *New College*, One Candidate for the Headship hath 30, another 16, and another 14; He who hath 30 is not Elected. If the 14 go over to the 16, and Each of the Candidates hath 30, the Senior Fellow hath no Casting Voice; there is still no Election; the Fellows must go to another Scrutiny; for the Election in that College is *Canonical*.

And, I believe, I may truly say, the Elections of Heads of Houses in Oxford are *Universally Canonical*; either strictly so, in the manner before describ'd; or, with such small Departures only from that strictness, as the Founders of the several Colleges have been pleas'd to enjoin by *express Statute, speciali jure*: a Circumstance which I desire may be particularly taken notice of.

However Surprising therefore, This way of Electing may be to Those who are unacquainted with Our Statutes, yet it is Familiar to Us. And I have this further remark to support This Meaning of the Term, That Dr Chaundler, the *Vice Chancellor* who Presided in the Assembly of *Doctors* and *Professors* at the making of this Statute, was then *Warden of New College*; and that it is not unlikely, when the Visitors were met together to remedy the Inconvenience which had been found in the Senior Fellow's *Succeeding* to the Headship, by a statute directing an Election of a Head to be made for the future, but that the *Vice-Chancellor* might recommend That Sort of Election to be Establish'd by them, which He had experienc'd in his Own College to have been Practis'd without Inconvenience. I am well aware that this is only a Conjecture, and bring it not as a Proof that the Term in *University College* Statutes is to be explain'd by the Method of Electing in *New College*; but I hope however I may have leave to say, that even this Presumption, slender as it is, is a better Proof of the Meaning of that Term contended for by the *Appellant*, than hath yet been brought for any Other meaning of it Suggested by the *Appellate*.

But if I am then of Opinion, that a Master of *University College* must of necessity, be Elected by a *Canonical Election*, or by a Major part of the whole Number of Electors Present, how was I induc'd, it will be said, to *Confirm* an Election afterwards made by Four only Electing Mr Denison, when, at the same time, there were Other Four Present and Protesting against This Election. Are Four Electing more than Four Protesting? or are Four when Mr Denison is Elected, more than Five when Mr Cockman is elected? Why, when the Matter comes to be explain'd, I think it is even so; and Four Votes which are good for something, are more than Four or Five that are good for nothing. The Case in short is This.

The Visitors had declar'd the Nullity of Mr Cockman's Election, because it was not *Canonical*; and Enjoin'd the Fellows to proceed to Another Election *Canonically*. The Senior of the Ten retir'd before the Judgment of the Visitors was known. Nine Remain'd. The Whole Congregation were regularly Cited to the Election of a Master. Nine only Appear'd. Four Voted for Mr Denison well Qualified so to do. Four Declar'd the Mastership to be already Full, and, tho' requir'd by the Scrutators, in pursuance of the Visitor's Decree, Refus'd to Vote at all. Instead of Conforming Themselves to their Superior's Injunctions, they Persisted in their Contumacy². If the Absent Member had return'd, and Five had Voted for Mr Cockman, as before, as yet there would have been no Election. Or, if Four only had Voted for Mr Cockman, and Mr Denison, after Publication of the Scrutiny, had ³ Consented to his Own Election, and thereby made a Majority for Himself; and the Regularity of This Proceeding had been Question'd by his Opponents, and They had Appeal'd, They must have been Heard; as yet the Visitors would have suspended the Confirmation of His Election. But *Electors Absent*, after regular Citation⁴, or *Electors Present*, and *not Voting* when requir'd², are not reckon'd of the Number of Electors. And Mr Denison, now, in the Opinion of the Visitors, is no so much Elected by a *Majority*, as *Unanimously*.

These are My Thoughts of This Matter, and, as far as I can learn from the Conversation I have had with the Rest of the *Acting Visitors*, I speak Their Sense of it also. The same Degree of Light into This Affair, which hath, as I hope safely conducted Me in the several Steps I have taken hitherto, would, I believe, have Justified Me in proceeding further. But having a Natural Reluctance to any Acts of Severity, and This increas'd by a Want of Unanimity in the Visitors, and a Fear of being Injurious, if I Myself, after the pains I have taken to be rightly inform'd, should happen to be Deceiv'd; and finding the same Tenderness in Others which I felt Myself, I was Desirous, First, to Publish *This Paper*; to the end That the World might see, upon *What Grounds* We had Acted; and That Those, who had declin'd to Act with us, might be Invited to shew, upon *What Better Grounds* They had done so. Let *All Further Evidences, if any there be*, relating to This Affair, lie open; and let Those, who are concern'd to know what They contain, have free Access to them. If therein there shall be any Thing found of *Strength*, or *Weakness*, which either Party were not before appriz'd of, let it be frankly Own'd, when it shall have been duly Consider'd. In the mean time, as I do not Arrogate to Myself the Wisdom of *Being* in the right,

¹ Electio nihil aliud est, quam hominis alicujus ad Dignitatem, vel Fraternali Societatem Canonice facta Vocatio. Instit. Jur. Tit. de Elec. §. Ceterum.

² Verus Contumax est, qui monitus per Judicem ad eligendum juxta formam Statuti, se dicat nolle Eligere. non potest appellare quia verus contumax est. Joh. de immol. Consil. 126. n. 2.

³ ut quis possit consentire Electioni de se facta, oportet, quod Vox Sua, una cum aliis, qui eum elegerunt, constituat majorem Partem; Secus, si ad Paritatem perduxit Vota aliorum. Sed si fuisset processum per formam scrutinii privati, non posset iste consentire à principio in Seipsum, cum ignorat an alii in eum consenserint. Credo tamen, quod si iste, electus ab aequali parte, consensisset, in scrutinio privato, in alium, qui non est electus à majori parte, quod possit recedere, facta publicatione, ab illâ Nomina-

tione & consentire Electioni de se facta, & consentiendo, augere Numerum. Abbas de Electione. Cap. cum in jure N. 5. in fin.

⁴ Quando Convocatio Universitatis fit per eum, ad quem de jure, vel Consuetudine spectat, tunc, talis Citatio constituit non Convenientes in Contumaciâ, adeo quod Venientes duntaxat possunt explicare quæ incumbant agenda. Abbas de Elec. Cap. in causis. N. 9.

Tene semper mente istum Textum. Quod Vocati ad Capitulum per habentem potestatem, faciunt se alienos si comparere nolunt, ex quo inferitur, quod isti non sunt computandi in numero absentium, sed, in numero eorum qui sunt in Capitulo, sed, quoad Actum tunc explicandum habentur ac si non essent de Capitulo. Abbas de Elec. Cap. cum nobis. N. 3.

so neither would I have any One to Value himself overmuch upon the Felicity of being *Thought* to be so. I have had, I confess, but very Little Experience in matters of this kind, and may, therefore, be under some Mistakes. Many of Those, who differ from Me, have had Greater; and, as They are well Able to Undeceive Me, if I have Err'd, so, that They may be Inclin'd to do it, I do assure Them, I will always Act, as I shall be convinc'd I Ought. The Competitors Themselves are Both of them very Agreeable to Me; do Both Deserve much better Preferment than That for which They contend. And tho' at present, I am not of the Opinion of Those who have Espous'd Mr. *Cockman's* Cause, yet, I will not Allow Any One of them to have a Greater Esteem for Him. But the Dispute is not about the Merit of Men, but about the Validity of an Election. What *Canonica Electio* was generally understood to mean in 1475; and Whether Those, who then made use of That Term in This Statute, did not design it should *Afterwards* mean what it *Then* meant, are my Enquiries. I think it not at all Material, to say, How little the *Canon Law* is now in use; or, How Few, if Any, Elections are, at this day, made *Canonically*, by the Direction of That Term. The Letter of the Law, and the Intention of the Lawgiver, so far as That can any ways be known by me, are what I strictly regard. And, therefore, I beg leave, before hand, to give notice to the Rectifier of my Judgment, That any Argument offer'd by him to carry me off from This Point, upon which I perpetually keep my Eye, will only convince me of This, That He ought not to be *One of the Executors of My Will*.

Senior Socius regulet Juniores was the Statute which directed the Master's Succession to the Headship according to the *Order of Seniority* in 1292. When the Visitors found Inconvenience in *That Statute*, They gave the College *This* instead of it. When They shall find Inconvenience in *This*, they may do well to give The College *Another* instead of *This*. But, till They shall think fit to do so, Neither The College, in my opinion, are to depart from the Observance of *This Statute*, nor the Visitors from Their Power to Compell them to it. I am, Sir,

Your's &c.

POSTSCRIPT.

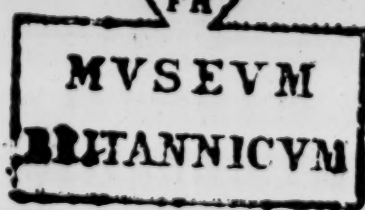
IT hath, of late, been reported, That Mr. *Cockman*, having been a Fellow of Sir *Simon Bennet's* New Foundation, is not *de Gremio & Comitiva Collegii*, and, consequently, not capable of being Elected Master without a Dispensation.

This Report, I find, is grounded upon a Fact recorded in the College Register, p. 122. where, it appears, That before Mr. *Bennet* the Founder's Kinsman, and a Fellow of *This New Foundation*, could be Elected Master, The Society were forc'd to Petition the Visitors for a *Dispensation to Choose whom they would, for That Turn, notwithstanding the above-written Clause*. Which shews, that, without such Dispensation, *That Clause* would have effectually withstood his Election.

After the Same Manner, and, in the very Same Form, did the Society, upon the Death of *Bennet*, again Petition the Visitors for a Dispensation to Choose a Master whom they would: And, having obtain'd it, Chose Dr. *Charlett* then Fellow of *Trinity College*. By which it should seem that the Fellows of Sir *Simon Bennet's* Foundation in *University College* are no more *de Gremio & Comitiva Ejusdem Collegii*, in This Respect, than the Fellows of Sir *Thomas Pope's* Foundation in *Trinity College*.

How This came to pass, I have This Account. When the Statute, which hath *This Clause* in it, was made, in 1475, there were Ten Fellows *de Gremio & Comitiva Collegii*, call'd then *North-Country Fellows*; and, since Sir *Simon's* New Foundation, *Fellows of the Old Foundation*. The Fellows of this Old Foundation, having, many years ago, consider'd, That the Revenue of the Headship, (being no more than That of a Single Fellowship) was no way proportion'd to the Dignity of That Station, did Agree, amongst Themselves, to sink One of these North Country Fellowships, and to Augment the Headship (of which Any of them, or, any of their North-Country Successors might hereafter be capable) by an Addition to it of the Revenue of such Fellowship so sunk. And, having done This, thought it but Reasonable to Exclude any Fellow of any New Foundation from being capable of That Headship which the Old Foundation had Augmented, without a Dispensation obtain'd at the Request of the Society. The Truth of This Account may be further Enquir'd into, if there be Occasion.

In the mean time, This is Fact. The Only Fellow of the New Foundation, that hath ever been Elected Master of *University College*, was Mr. *Bennet*. Mr. *Bennet* was not Elected Master without a Dispensation obtain'd by the Society from the Visitors. Mr. *Cockman* was a Fellow of the New Foundation, as was Mr. *Bennet*. And the Society have not obtain'd a Dispensation from the Visitors to Elect Mr. *Cockman*.



F I N I S.

